

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES C. KISTNER,

Plaintiff,

vs.

Civil No.: 18-CV-00402

THE CITY OF BUFFALO, BYRON LOCKWOOD,
DANIEL DERENDA, LAUREN McDERMOTT,
KARL SCHULTZ, KYLE MORIARITY, DAVID T.
SANTANA, and ANTHONY McHUGH,

Defendants.

**ATTORNEY DECLARATION
IN OPPOSITION TO DEFENDANTS' MOTION**

R. ANTHONY RUPP III, ESQ., declares under the penalty of perjury:

1. I am an attorney duly licensed to practice law in the State of New York, and before the United States District Court, Western District of New York. I am a partner with the law firm of Rupp Baase Pfalzgraf Cunningham LLC, attorneys for plaintiff, James C. Kistner, in the above-entitled action. I have worked on this matter extensively; therefore, I am fully familiar with the facts and circumstances of this case.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

2. The facts and evidence supporting this motion are as set forth in the Statement of Material Facts submitted pursuant to Local Rules of Civil Procedure 7(a)(5) and 56 that is being filed contemporaneously with this motion.

3. The following documents were marked as exhibits during depositions in this matter and are attached in opposition to Defendants' motion:

- Exhibit A:** Transcript of BPD Commissioner Byron Lockwood's deposition testimony.
- Exhibit B:** "Fleet Management Maintenance Work Order" marked as Depo. Exhibit 18.
- Exhibit C:** Colored photograph of Plaintiff at booking confirming an abrasion to his head caused by the subject accident.
- Exhibit D:** Plaintiff's response to Defendants' Interrogatories.
- Exhibit E:** Audio recording of Officer Karl Schultz's statement to IAD.
- Exhibit F:** Audio recording of officers' calls to dispatch on January 12, 2017, marked as Depo. Exhibit 10.
- Exhibit G:** Transcript of BPD Officer Santana's deposition testimony.
- Exhibit H:** Certificate of disposition dated April 2, 2017 dismissing all charges against Plaintiff.
- Exhibit I:** IAD complaint letter, dated February 8, 2019, marked as Depo. Ex. 41.
- Exhibit J:** Letter to Kistner notifying him of IAD investigation outcome, dated August 13, 2020, marked as Depo. Exhibit 38.
- Exhibit K:** Audio recording of Kyle Moriarity's statement to IAD.
- Exhibit L:** Audio recording of Jenny Velez's statement to IAD.
- Exhibit M:** Audio recording of Lauren McDermott's statement to IAD.
- Exhibit N:** Transcript of Daniel Derenda's deposition testimony.
- Exhibit O:** IAD Case Index, marked as Depo. Ex., 43.

Exhibit P: BPD Top 10% list for officers with most excessive force and general police misconduct complaints.

Exhibit Q: Karl Schultz disciplinary card, marked as Depo. Exhibit 45.

Exhibit R: IAD Summary Report, marked as Depo. Exhibit 46.

Exhibit S: Officer McDermott's videotaped deposition testimony

Exhibit T: Commissioner Byron Lockwood's videotaped deposition testimony.

4. Plaintiff refers the Court to the previously filed affidavit of Dr. Jennifer Yaek, and the exhibits attached thereto, which was filed in support of Plaintiff's affirmative motion for partial summary judgment. (*See* Dkt. 4).

Dated: May 14, 2021
Buffalo, New York

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